
(1975) 02 RAJ CK 0008
In the Rajasthan High Court

Kalyanmal Bhandari

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-02-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Road Transport Corporations Act, 1950 — Section 10, 14, 19, 3, 34

Citation : (1976) 1 LLJ 54 : (1975) RLW 98 : (1975) WLN 316

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Judgement

Kan Singh, J.—This is a writ petition under Art, 226 of the Constitution by one Shri Kalyan-mal Bhandari for an appropriate writ, direction or order. He has made a twofold prayer: firstly, he has prayed that the option that was taken from him by the State of Rajasthan for going to the service of the Rajasthan State Road Transport Corporation, hereinafter to be referred as "the Corporation" was really no option and, therefore, the State Government be directed to take him back to its service and then be further directed to confirm him as upper division clerk from the year he was working as such and then give him all the consequential benefits. In the alternative, he has prayed that a direction be issued to the Corporation to confirm the petitioner on the post of upper division clerk from 30-11-55 and give him all consequential benefits resulting from such confirmation.

2. The petitioner was first appointed as a lower division clerk in the erstwhile Jodhpur State in 1945. He was promoted as upper division clerk on 1-4-49 and was holding this post at the time of the formation of Rajasthan. In the course of integration he was fixed on the post of a lower division clerk in 1952. In October, 1955 he was Jagir Accounts Inspector which post was inter-changeable and equivalent to the post of upper division clerk. On 27-10-61 the petitioner was appointed by transfer as an upper division clerk in the Rajasthan State Roadways Department of the Government under orders of the General Manager, Rajasthan State Roadways, temporarily, vide order Ext. 2 on record. On the formation of

the Corporation with effect from 1-10-64 the petitioner's services like those of other employees of the Government in the Roadways Department were placed at the disposal of the Corporation for a period of 6 months in the first instance. The petitioner's period of deputation with the Corporation was extended from time to time. On 15-4-66 options were invited from the employees of the erstwhile Rajasthan State Roadways Department whether they would like to be in the service of the Corporation or revert to the State service. During the period of deputation of the employees the Government created certain supernumerary posts in the Transport Department for keeping the lien of the employees on deputation with the Corporation. The petitioner admits to have given his option for the service of the Corporation, but he avers that at the time he was terribly disturbed and it was under the distress on account of the death of a near relation that without appreciating the implication of the option he gave his option for the service of the Corporation. On 10-5-67 the petitioner was told that the option given by him was final and he could not be taken back to Government service for which he had been trying. Since then the petitioner was continuing in the service of the Corporation. The petitioner made representations to the State Government that he be confirmed as upper division clerk from the year 1955 and in the Corporation he be confirmed as upper division clerk from the date he was entitled to be confirmed as upper division clerk under the Government. On such representation he has placed on record as Ext. 8. Another such representation he has reproduced in para 9 of his writ petition. He has averred that he made representations for this time and again between 4-11-66 and 27-6-69 (vide para 9). The petitioner's grievance is that his case for confirmation as upper division clerk was ignored by the General Manager of the erstwhile Roadways Department when in August, 1964 certain confirmations of upper division clerks were made by him. Therefore, on 8-9-66 he made a representation to the General Manager of the Corporation, but this was of no avail as the petitioner was told that the General Manager of the Corporation had got no power to confirm the employees of the Government. On 4-11-66 the petitioner submitted a representation to the General Manager of the Corporation again with a view to knowing his fate and whether his representation to the Government had been forwarded or not. In this representation also he repeated his prayer that he be confirmed on the post of upper division clerk from 30-11-55 from which date he was working, as this had adversely affected his seniority. In 1965 a seniority list was published by the General Manager of the Corporation and the concerned were invited to file their objections, if any. The petitioner's grievance is that though he filed objections against this list, his objections were not considered. The petitioner contends that he had been meted out a discriminatory treatment when his case for confirmation as upper division clerk was not considered and he was not confirmed whereas other employees who had been working from subsequent dates as upper division clerks were so confirmed,

3. The writ petition has been opposed by the respondents. The State has not chosen to file any reply to the writ petition. Learned additional Government

advocate, has, however, argued the case on the basis of the material available on record. The Corporation has filed a written reply. It is denied that the petitioner is entitled to any relief. It was submitted that the writ petition was a belated one and should be dismissed on that ground alone. Then it was urged that the petitioner opted for the service of the Corporation in pursuance of the option notice Ext. 4 dated 15-4-66 and, therefore, he cannot now be said to be the holder of a public office. The relations between the petitioner and the Corporation were, according to the Corporation, those of ordinary master and servant and consequently the petitioner was not entitled to maintain the writ petition. Apart from this it was urged at the time of arguments by learned Counsel for the Corporation that the petitioner is not entitled to get any relief as he has not impleaded persons who are likely to be affected on the issuance of any writ or direction. At any rate, according to learned Counsel for the Corporation, persons who have been shown senior to the petitioner in the seniority list Ext. 10 were necessary parties in the writ petition.

4. The Government were running the transport services, prior to the formation of the Corporation, as a departmental undertaking. The employees of the Rajasthan State Roadways Department were like any other employees of the State Government and their service conditions were governed by the Rajasthan Service Rules, 1951 and other rules applicable to civil servants generally. When the Corporation was constituted the employees were given an option for going to the service of the Corporation. The option contained the necessary terms on which they were to go to the service of the Corporation. Till an employee gave his option for the service of the Corporation he was to be treated on deputation. The State Government had further issued certain direction regarding the terms and conditions for the employees who were to opt for the service of the Corporation, by a notification dated 18-11-64, in exercise of the powers u/s 34 of the Road Transport Corporation Act, 1950 (Central Act No. 64 of 1950) hereinafter to be referred as "the Act." Besides this the notification provides that the Corporation shall take over the management of existing Roadways Department of the Government of Rajasthan. All stores, articles and other movable goods of the Roadways Department were to pass on to the Corporation. All land, buildings and other immovable property belonging to the Roadways Department was to be given to the Corporation on lease on such terms and conditions as may be determined by the Government. Then having made provision for the assets and liabilities of the erstwhile Roadways Department and for the continuance of certain legal proceedings in Courts in Clause (4) of the notification the following provision was made for the Government employees in the Roadways Department:

(6) The services of all Government employees holding whole or part-time posts in the Roadways Department shall be temporarily placed at the disposal of the said Corporation on deputation for a period of three months or for the period as may be extended from time to time by the Government till the terms and conditions governing them at present till the Corporation frames its own regulations, in respect of services of their employees which shall not be less

advantageous than the terms and conditions applicable to them at present, including provisions for observation in the services of the Corporation of Government employees of the Roadways Department:

Provided that no deputation allowance will be given to the Government employees for the deputation period. Leave salary and pension contribution shall be regularly paid by the Corporation in respect of all Government servants :

Provided further that in respect of disciplinary proceedings or appeals arising therefrom, pending immediately before the 1st October, 1964, the State Government shall exercise all powers, although they will be under the administrative control of the Corporation.

Vide Ext. 3, dated 11-2 65, the employers whose names are given therein were treated to be on deputation with effect from 1-10-64. Vide a circular letter dated 15-4-66 (Ext. 4) the employees were required to give their options. The petitioner gave his option and he was treated thereafter as the employee of the Corporation. By a notice dated 25-4-70 the Assistant General Manager of the Corporation published a seniority list of the employees, the relevant, extract whereof is as follows:

PROVISIONAL SENIORITY LIST OF ACCOUNTS CLERKS & U.D.Cs.

S	No	Name of Employee	Designation	Qualification	Date of	as	Confirmed	
Temporary	U.D.C.	and/Clerk						
-----	1	2	3	4	5	6	7	-----

1. Shri Maqbool Hussain U.D.C. Matric 1-1-53 8-5-56 U.D.C. -
2. ? Inderpal Singh ? B.A. 20-10-51 31-7-56 U.D.C. -
3. ? S.D. Balooja ? Matric 10-9-56 10-9-56 " -
4. ? Madanlal Sharma Accounts Clerk B.A. 1-4-59 1-4-59 ? -
5. ? Babulal Pushpa " 19-1-61 19-1-61 A/C -
6. ? Manoharlal Bothra U.D.C. Matric 14-10-55 11-8-64 U.D.C. -
7. ? Nathulal Agarwal ? Matric 3-1-58 11-8-64 ? -
8. ? Shiv Dan Singh ? Matric 20-9-60 11-8-64 ? -
9. ? Moolchand Verma ? B.Com. 11-10-60 11-8-64 ? -
10. ? Ram Bilas ? Metric 1-7-61 11-8-64 ? -
11. ? Madanlal Johri Accounts Clerk 25-5-63 3-9-64 A/C -
12. " Kan Chand Mathur Accounts Clerk 21-11-62 30-9-64 ? -

...

...

...

Note : Kalu Mal Bhandari is incorrectly written for Kalyanmal Bhandari.

The list contains in all 112 names, but as persons whose names occur after that of the petitioner are shown junior to the petitioner, such names need, not be reproduced.

5. It will appear from the above list that many of the persons above the petitioner came to be appointed as upper division clerks from dates later than the petitioner; only three persons, viz., Maqbool Hussain, Inderpal Singh and Babulal were working as upper division clerks from dates earlier than the petitioner. The petitioner's contention is that he too should have been confirmed from 6-11-55, from which date he was working as an upper division clerk. The petitioner relies on Regulation 119 of the Rajasthan State Road Transport Employees Service Regulations, hereinafter to be referred as " the Regulations," made by the Corporation. I may read Regulation 119 :

119. Seniority in each class of service shall be determined by the date of the order of substantive appointment to a post in that cadre:

Provided:

(i) that the seniority inter se of the employees in each class of service who are appointed in Corporation's service as a result of exercising their option to become the employees of the Corporation shall remain the same as will be determined by the Government of Rajasthan on the day on which they cease to be Government servants. Such employees shall rank senior to those whose seniority shall be determined in the manner laid down in Sub-clause (ii) and (iii) below,

(ii) that the seniority inter se of persons appointed to post in a particular class of service by direct recruitment, except those who do not join service when a vacancy is offered to them shall follow the same order in which they have been placed in the respective list prepared by the Services Recruitment Board under Regulation 116(b)(ii) and

(iii) that if two or more persons are appointed to the same category of senior posts in the same academic year, a person appointed by promotion shall be senior to a person appointed by direct recruitment.

6. The bone of contention between learned Counsel for the petitioner, on the one hand, and learned additional Government advocate and the learned Counsel for the Corporation on the other, was whether the Regulations were statutory in character or they were merely for the internal management of the affairs of the Corporation and accordingly not justiciable whereas learned Counsel for the petitioner contended that the Regulations having been made u/s 45 of the Act by

a statutory authority, namely, the Corporation, will have a statutory force, this was disputed by learned Counsel for the respondents who took the stand that they were like the bye-laws for the internal working of an auto-nomous body and/or like the articles of association of a company and as such were not justiciable and the petitioner was consequently not entitled to any relief on this ground. A number of cases were cited by learned Counsel on either side. Most of the cases cited have been discussed in the judgment of Shmghal, J. in Rameshwarlal v. Rajas-than State Road Transport Corporation (1972) R.L.W. 640 . Shanghai, J. considered S.R. Tewari Vs. District Board Agra and Another, Indian Airlines Corporation Vs. Sukhdeo Rai, Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, and matching the observations of one case with the other, recorded his conclusions in the following words

As has been stated, their Lordships of the Supreme Court have, in their three judgments afterwards quoted, namely, Executive Committee of U.P. State Warehousing Corporation, Lucknow v. Chandra Kiran Tyagi (supra), Indian Airlines Corporation v. Sukhdeo Rai (supra) and Vidhya Ram Misra v. Managing Committee, Sri Jai Narain College, referred with approval to the one of the following English cases-(i) Vine v. National Dock Labour Board, (ii) Barber v. Manchester Regional Hospital Board, (iii) Ridge v. Baldwin and (iv) Malloch v. Abordeen Corporation, for the purpose of arriving at their decisions, The learned Counsel for the parties have also referred to them during the course of their arguments. I have, therefore, gone through them. Broadly speaking, they may be said to lay down the following rules or principles of general application in such cases :

(1) Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Courts will not, therefore, declare such a wrongful dismissal to be invalid even though it may give rise to a right of action for breach of contract : Vine v. National Dock Labour Board, per Lord Keith.

(2) But it is the function of the Courts to keep "public authorities" within the limits of their statutory powers and, therefore, if a public authority purports to dismiss its employees otherwise than in accordance with the mandatory procedural requirements, or on grounds other than those sanctioned by statute, the Courts have jurisdiction to declare it a nullity: Vine v. National Dock Labour Board,

(3) Where the relationship despite the "strong statutory flavour" attaching to the contract, approximates, in substance, to an ordinary contractual relationship between master and servant, the Courts would still be disinclined to award a declaratory relief : Barber v. Manchester Regional Hospital Board,

(4) The more closely the relationship approximates to one in which a special status is conferred upon the employee, the more readily will the Courts be persuaded to grant a declaration in favour of a wrongfully dismissed employee: *Vine v. National Dock Labour Board* and *Ridge v. Baldwin*.

(5) Pure master and servant cases mean cases in which there is no element of public employment or service, no support by statute; nothing in the nature of status which is capable of protection. If any of these elements exists, then irrespective of the terminology used, and even though in some inter parties aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in the dismissal being declared void : *Malloch v. Aberdeen Corporation*-per Lord Wilberforce.

In view of this decision learned Counsel for the respondents argued that the matter stands concluded or, at any rate, a reference to a large Bench would be appropriate, if I have to take a different view of the matter. Learned Counsel for the petitioner, however, submitted that after the judgment of Shinghal. J., there has been a case decided by the Constitution Bench of the Supreme Court in *Sirsi Municipality v. its President Sirsi Vs. Cecelia Kom Francis Tellis*, and this case should, therefore, guide the consideration of the matter and. therefore, a reference to a larger Bench would not be necessary. He further relied on three Full Bench cases of other High Courts, namely, *Satnam Singh v. Zila Parishad Ferozepur* (1974) 1 S.L.R. 832, *G.R. Luthra v. Lt. Governor, Delhi* (1974) 2 S.L.R. 762 and *Indian Institute of Technology v, Mangat Singh* (1973) 2 S.L.R. 46.

7. In *Sirsi Municipality v. C.K.F. Tellis* (supra) their Lordships reviewed the earlier Supreme Court cases, namely, that of *S.R. Tewari Vs. District Board Agra and Another*, *Indian Airlines Corporation Vs. Sukhdeo Rai*, *Executive Committee of U.P. State Warehousing Corporation, Lucknow v. Chandra Kiran Tyagi* [1970 1 L.L.J. 3271 , *Calcutta Dock Labour Board Vs. Jaffar Imam and Others*, *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, , *Life Insurance Corporation of India v. Sunil Kumar Mukherjee* 1984 1 L.L.J. 442, and a few other cases. These cases were precisely those which had been reviewed by Shinghal, J. .After discussing the aforesaid cases their Lordships observed in Para 24 of their judgment as follows :

This Court in *S.R. Tewari Vs. District Board Agra and Another*, *Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others*, *Calcutta Dock Labour Board Vs. Jaffar Imam and Others*, and *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, dealt with the power of statutory authorities and bodies to dismiss servants. These decisions establish that the dismissal of a servant by statutory including local authorities or bodies in breach of the provisions of the statutes or orders or schemes made under the statute which regulate the exercise of their power is invalid or ultra vires and the principle of pure master and servant contractual relationship has no application to such cases.

This passage shows what their Lordships had taken to be the gist of the earlier cases. These cases, according to their Lordships, had dealt, with powers of statutory authorities and bodies to dismiss their servants. These decisions further establish that the dismissal of a servant by statutory authorities including local authorities or bodies in breach of the provisions of the statutes or orders or schemes made under the statute which regulate the exercise of their power is invalid or ultra vires and the principle of pure master and servant contractual relationship has no application to such cases.

8. Learned Counsel for the Corporation as well as learned additional Government advocate submitted that Sirsi Municipality's case was one of a local Government authority who have power to tax the citizens as well as to prescribe penalties and there are thus exercising Government or sovereign functions, but the same thing cannot be said regarding a statutory Corporation who are engaged only in a trading activity. Learned additional Government advocate stresses that the rule laid down in the Indian Airlines case and in Chandra Kiran Tyagi's case (supra) should govern the matter, as none of these decisions has been overruled in Sirsi Municipality's case (supra). Learned additional Government advocate and the learned Counsel for the Corporation were at pains in drawing comparison between the Act and the Indian Airlines Corporation Act, 1953 under which the Indian Airlines were established. It was in particular submitted that Section 45 of the Act under which the Corporation had made the regulations was in pan materia with the corresponding Section 45 of the Airlines Corporation Act, 1953 and thus the Indian Airlines Corporation's case still holds the field so far as the present case is concerned.

9. I find it exceedingly difficult to accept this. Though their Lordships were dealing with the case of a Municipality, the observations that I have extracted above giving the effect of the earlier decisions show that both the statutory authorities as well as the local authorities or bodies were contemplated and if they are found to act in breach of the provisions of not only a statute but of orders or schemes made under the statute, their action will be open to challenge and in their cases principle of pure master and servant's contractual relationship would be having no application.

10. I may in my humble way deal with the statutory provisions closely with a view to ascertaining the true character of the regulations.

11. One generally comes across the corporate or autonomous bodies which may fall under (1) a company, (2) a local body like the municipalities or the panchayats, (3) autonomous bodies like the universities, (4) statutory bodies like corporations created under the statute or other bodies like electricity boards constituted under the relevant enactments.

12. So far as the companies are concerned and some of the Government undertaking are run in the form of private limited companies there could be no difficulty. The regulations or the rules made for the internal business cannot

normally have statutory force. Likewise, in the case of an autonomous body like a university, there may be no difficulty as the university is created by the Act itself and is conferred certain powers. Municipalities or Panchayats are undoubtedly exercising Governmental functions in the allotted sphere. Difficulty is experienced only in the case of the statutory Corporation like the Transport Corporation in the present case. These are hybrid. Their complexion is that of an ordinary business undertaking. They are expected to be run on business lines, but the mode in which they are created or the kind of control that is exercised by the Government put them at a position where they partake of the character of not only a business concern but also of a Government organisation,

13. The Corporation is established u/s 3 of the Act, It is done with a view to affording advantages to the public trade and industry by the development of road transport, the desirability of coordinating any form of road transport with any other form of road transport and the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein. The purpose is not purely commercial in the sense that the motive is profit making, but it involves the discharge of functions of a welfare State who is interested in the development of the Road Transport so as to provide efficient, economical and co-ordinated transport service to the public.

14. Section 5 lays down that the Corporation shall consist of a Chairman and such number of other members as the State Government thinks fit to appoint. It is clear that all the members including the Chairman are appointed by the Government.

15. Section 8 enables the State Government to remove from Office the Chairman or any other member of the Corporation though it has to be done for sufficient reasons.

16. Section 14 is for the appointment of officers and servants of the Corporation and I may read this section:

Section 14 Officers and servants of the Corporation,- (1) Every Corporation shall have a Chief Executive Officer or General Manager and a Chief Accounts Officer appointed by the State Government,

(2) A Corporation may appoint such other officers and servants as it considers necessary for the efficient performance of its functions,

(3) The conditions of appointment and service and the scales of pay of the officers and servants of a Corporation shall -

(a) as respects the Chief Executive Officer or General Manager and the Chief Accounts Officer be such as may be prescribed, and

(b) as respects the other officers and servants be such as may, subjected to the provisions of Section 34, be determined by regulations made under this Act.

It is to be noticed that so far as the Chief Executive Officer and Chief Accounts Officer are concerned, it is for the Government to prescribe the conditions of service, but so far as other officers and servants of the Corporation are concerned the service conditions have to be determined by regulations made under this Act. What I wish to notice is that for the laying down of the service conditions of the employees regulations are required to be made under this Act. Section 34 enables the State Government to issue directions to the Corporation. It, inter alia, provides that the State Government may after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

17. Then I may come to Section 44 which empowers the State Government to make rules to give effect to the provisions of this Act.

In this context I may now read Section 45.

Section 45. Power to make regulations.- (1) A Corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :

(a) the manner in which and the purposes for which, persons may be associated with the Corporation u/s 10;

(b) the time and place of meeting of the Corporation and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer ;

(d) the issue of passes to the employees of the Corporation and other persons u/s 19;

(e) the grant of refund in respect of unused tickets and concessional passes u/s 19.

This section empowers the Corporation to make regulations for the administration of its affairs, but this shall be with the previous sanction of the State Government. The phrase " previous sanction " has an accepted connotation in law. Whenever a thing has to be done by one authority with the previous sanction of another authority, the authority who is to do the thing has first to apprise the sanctioning authority of the entire proposal to do the thing and it is only when the authority gives the sanction that the thing can be done, but not

otherwise. I need not refer to many cases on the point except to cite one Division Bench case of this Court to which I was a party. It is *Bhikam Chand v. The State of Rajasthan* (1965) R.L.W. 358, in which it was observed:

Re. No. 3-As we have already observed, Section 37 of the Act requires that the marketing committee can frame bye-laws " with the previous sanction of the Director or any other officer specially empowered in this behalf by the State Government." As to what is the requirement of a previous sanction has been dealt with by this Court exhaustively in *Jethmal v. The State of Rajasthan*. Wanchoo, C.J., as he then was, dealt with the provisions of Section 64(j) of the *Rajasthan Panchayats Act*, which were quite similar to the provisions of Section 37 of the Act, in this behalf, and observed as follows:

There is a well-understood distinction in law between cases where a tax is imposed with the " sanction " of Government and cases where the tax has to be imposed with " previous sanction." Where the imposition of the tax is with the " sanction " of Government, all that is required is that the alter the necessary procedure has been followed by the body imposing the tax, it sends the final proposal to Government for sanction. Where, however previous sanction" is required for the imposition of a tax, the matter has to be submitted to Government twice for sanction. In the first instance, the body, as soon as it wishes to impose a tax which requires " previous sanction" communicates its wishes to Government and must get the sanction of Government to proceed to take steps for the imposition of the tax and follow the procedure provided for such imposition. It is only when this sanction of Government . is received that the body imposing the tax is authorised to take steps for publication of the tax intended to be imposed and for inviting objections to the tax. Thereafter it has to consider the objections and finally decide whether it would impose the tax and at what rate. When this is decided, the final proposal is again submitted to Government, for sanction, the tax can be imposed from such date as may be fixed under the law,"

" Whatever may be said as to the imposition of tax from Clauses (a) to (i) of Section 64(1), so far as a tax included in Clause (j) is concerned, the procedure relating to previous sanction is absolutely essential. Under Clause (j), the Panchayat selects a tax which it is not specifically empowered to impose under Clauses (a) to (i). In such a case, the repetition of the word " previous sanction " of the State Government in that clause makes it clear that before the Panchayat goes forward to notify its intention to impose such a tax on the inhabitants and calls for their objections, it must obtain the sanction of the Government to impose to tax which is not within its specific power to impose."

" On an earlier occasion too question arose whether in framing bye-laws under the *Rajasthan Town Municipalities Act, 1951*, only final sanction of such bye-laws will meet the requirements of that law and in that case reported as *Jainarain v. The State of Rajasthan*, to which one of us was a party, it was held by this Court that the previous sanction of the Government must be obtained to the very

introduction of the consideration of the bye-laws, that is, before they are moved in and considered by the Board. It was also observed in that case that the obtaining of the previous sanction of the Government is a condition precedent to the passing of bye-laws in question and the law is well-established that such a condition must strictly be fulfilled before the bye-laws can be held to have been duly passed.

In the above passage the observations of Wanchoo, C.J., as he then was have been reproduced. It is to be noticed that there is a well-understood distinction in law between " with sanction of the Government " and " with previous sanction of the Government." In the latter case the body has to go through the entire procedure and then submit the proposal for the sanction of the Government and after such sanction is received it has to go through the procedure for doing the thing once again and then has to adopt it.

18. Therefore, when regulations can be framed with the previous sanction of the State Government, the Corporation has to meet, resolve and to prepare a draft of the regulations. It is to be submitted to the Government for its sanction and on receipt of the Government's sanction the Corporation has once again to meet, resolve and then pass the regulation.

19. In this context the question very much arises as to who is the authority making that regulation. It cannot be said that it is the Corporation alone who is making the regulation, nor can it be said that the Government alone are making the regulation. It may very well be that the Government may not sanction the making of the regulation and that may be end of the matter. Likewise, even after the Government have accorded the previous sanction, the Corporation may change its mind and not think fit to pass the regulation.

20. Therefore, u/s 45 of the Act it is both the Corporation as well as the Government who can be said to make the regulation. It is the outcome of the respective application of the mind by the two authorities.

21. Now, as I have already noticed, the service conditions of the employees can be laid down by the regulations and they are required to be made. There is no provision that service conditions can be settled by a contractual procedure without having any regulations. Therefore, reading Sections 14, 34 and 45 of the Act together, I am of the opinion that the making of the regulations is an exercise of statutory powers of the Government as well as of the Corporation. A Corporation is nothing but a statutory body, that is, body created by the Government alone in the exercise of its statutory powers. Therefore, the regulations made by the Corporation are nothing but statutory in character.

22. Now I may deal with the other contentions of the respondents. Regulation 119 specifically deals with the seniority of the employees. Normally the seniority in each class of service is to be determined by the date of the order of substantive appointment to a post in the cadre, but regarding the employees of the erstwhile Roadways Department who had opted for the service of the

Corporation, proviso (1) lays down that the seniority inter se of the employees in each class of service who are appointed in Corporation's service as a result of option shall remain the same as will be determined by the Government of Rajasthan on the day on which they cease to be Government servants. Further such employees shall rank senior to those who are appointed by direct recruitment in the Corporation's service. Therefore, the seniority of such employees in the Corporation shall follow their seniority as may be determined by the Government on the date such employees came to the service of the Corporation. Two questions, therefore, arise here : (1) on which date the petitioner ceased to be in the service of the Government and likewise on which date persons shown senior to him in list Ext. 10 ceased to be in the service of the Government, and (2) whether the Government had fixed their seniority as on that date.

23. According to the notification dated 18-11-64, extracted already, the services of the employees were put temporarily at the disposal of the Corporation on deputation for a period of three months or for the period as may be extended from time to time by the Government on terms and conditions governing them at present till the Corporation framed its own regulations in respect of the services of their employees which shall not be less advantageous than the terms and conditions applicable to them at present. Therefore, at the very outset the employees were on deputation to the Corporation and continued as Government servants. It is only on the date they gave their option in terms of Ext. 4 which is dated 15-4-66 that they ceased to be Government servants and became the servants of the Corporation by an order dated 30-6-66 (Exit 7). The Government ordered that the employees shall be deemed to have been selected by the Corporation. Therefore, the next question arises whether on this date the Government had determined the seniority of the employees. No order of the Government determining seniority of such employees has been placed before me. What is available is Ext. 10 dated 25-4-70, a provisional list of seniority prepared by the Corporation, the relevant extract of which I have reproduced in the earlier part of the judgment. That list shows that persons shown senior to the petitioner had been confirmed between 8-5-56 and 30-9-64. It was the mandatory duty of the Government to pass an appropriate order regarding the petitioner's fate whether he should be confirmed on the post of upper division clerk or not and that would necessarily depend on the question whether the petitioner was working against any permanent post or not and whether he was a suitable person or not. Without this a proper seniority cannot be assigned to him. Indeed it has not been done at all.

24. Here I may consider a contention advanced by learned additional Government advocate in this behalf. He argued that since the petitioner was no longer in the service of the State and he was not holding any lien, this Court cannot pass any order against the Government regarding the assignment of seniority to him or confirming him for that matter as upper division clerk. Learned Counsel for the Corporation naturally showed his helplessness in the

matter, that the Corporation cannot do anything for the period anterior to 1-10-64, when it came into existence. He submitted that what the Corporation could do has been done and the petitioner had been confirmed as upper division clerk in its service from 1-10-64.

25. As I have reached the conclusion that Regulation 119 is statutory in character and the Government had not done their duty in the matter of such of its employees who were being transferred to the new master, namely, the Corporation, and as the seniority under the Corporation follows the seniority assigned to the employees by the State Government, I think the Government can yet be asked to do their duty by their erstwhile servants.

26. Learned Counsel for the respondents then submitted that the writ petition had been filed after an undue delay. The orders for the appointment of the petitioner in the service of the Corporation had been passed as back as 30-6-66 and the petitioner should not have slept over his rights, if any, for almost 4 years.

27. I have already referred to the representations filed by the petitioner in this connection. The first of the representations appears to have been made on 4-11-66 and the last one on 27-6-69 vide para 9 of the writ petition. A representation dated 4-11-66 is reproduced in this paragraph. Then there is one thing more and it is that at first the petitioner was confirmed in the service of the Corporation with effect from 1-10-64, but by a subsequent order dated 4-4-73 that order was superseded and the petitioner had been confirmed as upper division clerk with effect from 2-7-70. The events thus show that the position had never stabilized before 4-4-73.

28. In terms of Regulation 119 it was necessary for the Government to have fixed the seniority of the petitioner vis-a-vis other employees who came to the service of the Corporation as on the date on which they ceased to be in the service of the Government. This has never been done. There is no such delay in the filing of the writ petition as can be said to have been without an explanation.

29. Learned Counsel for the respondents also argued that the persons above the petitioner in the list Ext. 10 were necessary parties to the writ petition as will by granting of a writ their fate will be affected.

30. This point has not been raised in the reply to the writ petition; even so I have considered this matter. It is not a case of any wrong fixation of seniority or somebody else's fate being affected right now. It is a case where the Government have to do their duty under the statute and for this they may have to prepare a tentative seniority list; invite objections of all concerned and then determine the seniority of the petitioner vis-a-vis the other employees who had been transferred to the Corporation. All concerned will be having the opportunity of presenting their point of view and the final list will be prepared by the Government in the light of the representations by all concerned. It is not a case of disturbing anything which finally settles the position. Ext. 10 is a list prepared not by the Government, but by the Corporation and that could only follow the

seniority that the Government may fix in exercise of their powers under Regulation 119. Though the persons concerned were proper parties, I am unable to hold that their non-joinder is fatal to the writ petition.

31. In the result, therefore, I allow the writ petition and direct that the State Government shall first consider the question of the petitioner's confirmation as upper division clerk while he was in the service of the State and then determine his seniority vis-a-vis the other persons who were transferred to the service of the Corporation and in the light of the seniority that the Government assigns as on the date the petitioner and others ceased to be Government servants, the Corporation shall assign due seniority to such employees in its service.

32. The parties are left to bear their own costs.